

City of Blaine
Request for Council Action
Meeting Date: December 12, 2022

Subject: Employment Agreement for Public Works Director (Harpiar Gandhi).

Department: City Manager

Prepared By: _____
(Digital Signature)

Agenda Location: Consent Agenda Council Action Unfinished Business

Action Needed:

City Council must authorize the City Manager to enter into an employment agreement with Harpiar Gandhi for him to become the new Public Works Director.

Attachments:

1. Harpiar Gandhi Resume
2. Public Works Director Employment Agreement

Background/Summary:

After a comprehensive recruitment and interview process, the City Manager has selected Harpiar Gandhi for the position of Public Works Director. If approved at the April 10, 2023, City Council meeting, it is anticipated that Harpiar will become the Public Works Director on June 1, 2023.

The Public Works Director is an at-will position that is dictated by an employment agreement. Below are the primary financial related stipulations of the agreement:

1. \$140,988 annual salary
2. 5% monthly deferred compensation
3. 26 vacation days
4. 12 sick days
5. 12 paid holidays (11 statutory, one floating)
6. Three Administrative days
7. \$150 monthly HRA VEBA contribution (\$50 employee contribution and \$100 City contribution)
8. Starting vacation leave balance of 40 hours
9. \$250 taxable monthly vehicle allowance

Budget Implications: Current Budget New Budget Request Non-Budgetary

The Public Works Director position is included in the 2023 Budget.

Recommendation:

The City Manager recommends City Council authorize him to enter into an Employment Agreement for Public Works Director with Harpiar Gandhi.

Reviewed By:

City Manager _____ Finance Director _____ City Clerk _____
(Digital Signature) (Digital Signature) (Digital Signature)

Harpier S. Gandhi

1908 Schneider Dr,
Longview, WA 98632
Cell: 503 741 0802

Email: harpier@hotmail.com

Employment History

March 2020 – Till Date
City of Clatskanie, OR, USA

Director of Public Works

- Plans, directs, and manages all operations of the Public Works Department in order to provide cost-efficient and effective public services to the community;
- Facility maintenance and management of City owned buildings;
- Prepares the annual Public Works budget, monitors the financial status of operations, and recommends budget adjustments when appropriate to ensure expenditures do not exceed anticipated revenues;
- Reviews development plans and building permits for public services adequacy and conformance with development standards;
- Establishes and maintains effective working relationships with other jurisdictions including agencies at the local, state, and federal levels;
- Reviews and assists City Hall staff land use applications for conformance with the Municipal Code and other planning criteria;
- Prepares staff reports for presentation to the Planning Commission as needed regarding current planning applications for land use and limited land use decisions;
- Determines the completeness of applications submitted and advises applicants on the proper procedures to correct or complete applications, as needed;
- Establishes and maintains positive public relations and helps to resolve issues of public concern;
- Maintains productive working relationships with all other City employees, the City Manager, and the City Council, and provides effective leadership with subordinate employees;
- Supervises and evaluates employee performance;
- Providing Engineering expertise in the field of roadway planning, construction of new roads, Water and Wastewater System and other municipal assets.
- Providing technical engineering information to employees and to ensure project complies with all engineering standards, codes, specifications & design instruction

Harpier Gandhi
503-741-0802

Dec 2018 – Feb 2020

Altima Contracting Ltd, Vancouver, BC

Engineer/Consultant

- Providing consultancy services in regard to project approvals, working with the City's department for project issues.
- Working with City's Planning department regarding approvals and consultancy.
- Reviewing the estimates and making corrections to the provided estimates
- Site Visits for as built and approvals
- Preparing the as built documents for the clients
- Providing schedule for the clients
- Attending sites meeting with the clients
- Providing any other consultancy services required for the successful completion of the project.

July 2013- Nov. 2018

Municipal District of Bonnyville. AB

General Manager of Transportation & Utilities

- Managing and supervising the work of Transportation and Utilities staff and discusses priorities and schedules.
- Proving technical expertise in the field of roadway planning, construction of new roads, Water and Waste Water System, Landfills, subdivision approvals and other municipal assets.
- Providing positive leadership and guidance to the Transportation and Utilities staff
- Preparing and updating inventory information on the current standard and condition of the Municipal Districts road infrastructure, Water and Waste Water System and other Municipal infrastructure.
- Preparing and administering yearly tenders and RFP's for Municipal Works.
- Providing input and assists in development of asset management plans and strategies.
- Preparing of annual and five year works programs
- Strategic asset management plans and project cost estimates.
- Providing a methodology to accurately capture restoration costs
- Managing and maintaining of repair of all municipal roadways, roadside areas and related drainage work and installations
- Establishing an outline of roadway dust control programs and priority guidelines for municipal road system
- Managing program for the erection and maintenance of required signage and safety devices
- Preparing preliminary cost estimates for potential future works to facilitate consideration for approval and prioritization. Estimating the requirement for gravel crushing
- Schedule and arrange for preliminary survey design, engineering, construction activities and necessary land acquisitions to facilitate timely implementation of approved road programs and priorities

*Harpiar Gandhi
503-741-0802*

Sept 2012 – July 2013 **Town of Pelham, (Niagara Region) Ontario** (<http://www.pelham.ca/>)

Director of Public Works

- Overall responsibility for execution of established Town Infrastructure maintenance practices.
- Undertaking design, contract document preparation, tendering and construction work related to: Roads resurfacing programs; Roads reconstruction programs; Sidewalk construction and reconstruction programs; Water and sewer mains extensions outside of new plans of subdivisions; Park improvements.
- Providing directions to all operation and maintenance works related to Town sewers, drainage, water mains, cemeteries, roads and bridges, parks and designated buildings.
- Providing advice, support and guidance to staff and customers with respect to infrastructure asset data management issues
- Maintaining contact with the Regional Municipality of Niagara, Niagara Peninsula Conservation Authority, Ministry of Environment, and other Federal/Provincial agencies.
- Preparing specifications and tender documents for the works related to Town's infrastructure.
- Design, implement and administering a maintenance management system for Town's infrastructure.
- Conducting inspections on sanitary sewer, water distribution and storm drainage systems.
- Responding to inquiries and complaints from elected officials and the public.
- Assisting with the administration of subdivision and Development agreements.
- Administering operation of street light in conjunction with Hydro One & Pen West Utilities.
- Administering extension of Water and sanitary sewer system outside of new Sub division developments.
- Providing engineering/construction surveys for investigating and design purpose.
- Preparing annual Capital and Operating budgets and forecasts for the department.
- Preparation of technical/analytical reports with associated recommendations for considerations by town Council.

Harpiar Gandhi
503-741-0802

April 2010- Aug 2012 **Town of Grande Cache, Alberta** (<http://www.grandecache.ca/>)

Director of Public Works

- Responsible for assigned services and activities of the Water and Wastewater Divisions including water treatment and distribution, wastewater collection and treatment, planning, design, construction management and inspection services.
- Plan and implements changes in regulations on solid waste disposal, recycling, safety and other related issues.
- Planned, organized and monitored a variety of contracted work such as street resurfacing, sidewalk or drainage construction projects; cemetery construction; buildings and grounds maintenance projects; coordinates with engineers and contractors.
- Managed and participate in the development and implementation of goals, objectives, policies and priorities for programs; recommend and Administer policies and procedures.
- Plan, direct, coordinate and review the work plan staff; assign work activities, projects, and programs, review and evaluate work products, methods, and procedures, meet with staff to identify and resolve problems.
- Oversee and participate in the development and administration of the Town's annual budget; participate in the forecast of funds needed for staffing, equipment, materials, and supplies; monitor and approve expenditures; implement adjustments.
- Serve as the liaison for the Water and Wastewater Divisions with other departments, and outside agencies; negotiate and resolve sensitive and controversial issues.
- Produce required regulatory reports and ensure compliance with regulatory requirements, laws, codes, and enforcement actions.
- Attend and participate in professional group meetings; maintain awareness of new trends and developments in the field of water and wastewater management; incorporate new developments as appropriate.
- Respond to and resolve difficult and sensitive citizen inquiries and complaints

April 2007 – March 2010 **Altima Contracting Ltd, Vancouver, BC**

Project Manager

- Creating work plans and schedules and prioritizing the plan in consultation with the client.
- Assisting in negotiating project details (e.g. contract details, organizational charts).
- Providing technical engineering information to employees and subcontractors to ensure project complies with all engineering standards, codes, specifications & design instruction.
- Assists in preparation of field change requests to resolve design issue and accurate generation of as-built documents
- Assist in plan specification analysis in order to provide clear, traceable and coordinated interpretations of drawings and design for construction.
- Preparing cost estimates and budgets
- Overseeing the set-up and maintenance of project management tools, preparation of briefing notes, reports and presentations.

Harpiar Gandhi
503-741-0802

- Performing project evaluation through monthly variance reports and predicting the future budget to complete.
- Insuring that the work completed is within the scope baseline and within budget.
- Confirming the construction is as per design and as per local and federal regulation.
- Tracking records of extra work and change orders.
- Work with project controls and engineering to ensure all data is properly captured.
- Clearly communicating the scope and project expectations to the staff and contractors.
- Approving invoices for the sub-contractors confirming to the completion of work.
- Closing the project and hand over the project to the client confirming that the project is completed as per the scope definition. Closing all the procurement and rental contracts.

Oct 1999 – Dec 2006 CE Construction Ltd., India (<http://www.ce-construction.com/>)

CE Construction is a holding company in areas of Construction, Consultancy, Construction Management, Property Development, Manufacturing, Education, Finance, Health and Hospitality. The organization was founded in 1992 with general contracting and construction as its core area of operations.

Infrastructure Engineer

- Plan and coordinate engineering work related to design and construction of streets, sidewalks water and sewage systems, drainage structures, and other public works.
- Assist in the development and implementation of goals, objectives, policies & procedures.
- Administering and oversee the administration of contracts.
- Review and approve all payments and billings for contracted services.
- Assist in the review of projects under construction
- Coordinate the activities of the inspection unit
- Resolve complaints and problems in the field between the inspectors and developers, contractors and/or engineers.
- Participate in the preparation of engineering designs, specifications and cost estimates for a wide variety of capital improvement projects.
- Apply relevant codes, ordinances, rules and regulations.
- Prepare and review subdivision improvement agreements
- Prepare construction specifications, tender documents, and applications for approvals.

Education and Professional Development

Master of Engineering (Civil), University of Calgary, Alberta, Canada

Bachelor of Engineering (Civil), Gulbarga University, Gulbarga, India

Certificate in Municipal Management and Leadership, University of Alberta, Canada

Post Graduate Diploma in Business Management, Vancouver, BC

Membership- American Public Works Association

Member of Project Management Institute (PMI), Pennsylvania, USA

**CITY OF BLAINE
PUBLIC WORKS DIRECTOR
EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (the “Agreement”) is entered into this ___ day of April, 2023, by and between the CITY OF BLAINE, a Washington municipal corporation (hereinafter the “City”) and Harpiar Gandhi (hereinafter “Employee”), and is effective as of the last signature below.

WHEREAS, the City desires to employ Harpiar Gandhi in the position of Public Works Director; and

WHEREAS, it is the desire of the City Council to provide certain conditions of employment and set working conditions and conditions of termination; and

WHEREAS, the Employee, having been appointed as provided for under RCW Chapter 35A.13 by the City Manager, desires to maintain employment as Public Works Director of said City;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

I. EMPLOYMENT

1.1 The City hereby agrees that Harpiar Gandhi is employed as the Public Works Director for the City of Blaine, and Harpiar Gandhi hereby accepts under such employment, the terms and provision of this Agreement.

II. DUTIES

2.1 The Employee shall perform all of those responsibilities, duties, and obligations as set forth in the City of Blaine Public Works Director position description attached hereto as “Attachment A”, and such other duties and responsibilities as are legally and properly assigned by the City Manager.

2.2 Exempt Position. The Employee is designated as an FLSA Executive Exempt employee and, subject to the City Manager’s approval, is permitted to design a flexible work schedule as may be warranted to accomplish the continuing objectives of the City. The position of Public Works Director is also exempt from the provisions of the Washington State Minimum Wage Act.

2.3 Exclusive Employment. During the term of this agreement, Employee agrees to remain exclusively employed by the City and not to become employed by any other employer until the effective date of termination or resignation. The term “employed” shall not be interpreted to include occasional teaching, writing, or consulting work which does not interfere with Employee’s ability to effectively discharge his assigned duties.

2.4 Hours of Work. Employee’s schedule of work shall vary in accordance with the work required to be performed, including such time as is necessary outside

normal office hours. However, Employee is generally expected to be in the office a minimum of 40 hours per week, typically during regular business hours (8:30 am to 4:30pm) and to attend City Council meetings. Employee shall be compensated for the quality of his work product, as opposed to the number of hours required to perform his work.

III. SALARY

- 3.1 Commencing on the Commencement Date defined below, Employee shall be paid a salary of Eleven Thousand Seven Hundred Forty-Nine Dollars (\$11,749) monthly, or \$140,988 annually. On January 1 of each calendar year, Employee shall receive annual cost of living increases, based on the Seattle Urban CPI as approved in this agreement, or as funds are available and budgeted. Employee shall not receive a lesser cost of living increase than other exempt employees.
- 3.2 The Employee's salary will increase by Five Hundred Dollars (\$500) per month upon successful possession of a Professional Engineer (PE) certification in the Washington.

IV. PERFORMANCE EVALUATION

- 4.1 The City Manager will ordinarily review and evaluate the performance of Employee as needed. Performance and evaluations shall be in accordance with Blaine Policy and Procedure 03-02. The City Manager and Employee shall define goals and performance objectives which they determine necessary for the proper operation of the City and for the attainment of the City's policy objectives, and shall further establish a relative priority among those various goals and objectives. Goals and objectives shall generally be attainable within the time limitations as specified and within the annual operating and capital budgets and the appropriations provided.

V. PERSONAL DEVELOPMENT

- 5.1 The City shall pay Employee's dues in professional groups, provided they are approved in advance by the City Manager.
- 5.2 The City shall pay for the reasonable expenses of Employee's necessary travel and living expenses to represent the City at conferences, seminars, and training classes approved in advance by the City Manager.
- 5.3 The City recognizes the desirability of representation in and before local civic organizations, and Employee is authorized to become a member of such civic organizations as approved in advance by the City Manager. The City agrees to pay the membership fees for Employee in such civic organizations.

VI. VACATION, SICK, HOLIDAY, OTHER LEAVE

- 6.1 Vacation Leave. As of the Commencement Date, Employee shall have forty (40) hours of vacation leave. Employee shall accrue vacation leave at 17.33 hours per month. Maximum vacation accrual shall be 240 hours. Any unused accrued

vacation in excess of 240 hours at the end of a calendar year shall be forfeited by Employee.

- 6.2 Sick Leave. Employee shall accrue eight (8) hours of sick leave per month. Such sick leave shall be cumulative from month to month. Sick leave has no cashout value upon separation from employment except for the contribution to Employee's HRA VEBA as provided herein.
- 6.3 Sick Leave Incentive. Employee shall receive one (1) vacation day for sixteen (16) or fewer sick leave hours used in a full calendar year, and two (2) vacation days for eight (8) or fewer sick leave hours used in a full calendar year.
- 6.4 Holidays. Employee shall be entitled to one (1) personal, paid, floating holidays and three (3) paid administrative leave days (banked as floating holidays) to be used annually. In addition, Employee shall be entitled to the following eleven (11) holidays, based on an eight (8) hour day. Holidays may only be used on the day the holiday is recognized.

New Year's Day
Martin Luther King Day
President's Day
Memorial Day
Juneteenth
Independence Day

Labor Day
Veteran's Day
Thanksgiving Day
Native American Heritage Day
Christmas Day

Unused, banked floating holidays at the end of a calendar year shall be forfeited by Employee.

- 6.5 Bereavement. Employee shall be entitled to five (5) days of bereavement leave annually without loss of pay for a death in the immediate family, defined as wife, husband, significant other, son, daughter, mother, father, brother, sister, grandparents, and grandchildren of either employee or employee's spouse/significant other, inclusive of step and in-law. Three (3) days of bereavement leave without loss of pay shall be allowed annually for any other family member not defined as immediate family.
- 6.6 Administrative Leave Pending Investigation. The City Manager may place the Employee on paid administrative leave under circumstances which make it reasonably appropriate for Employee to be absent from the workplace during investigation, resolution, or pendency of procedures appropriate to the circumstances involving employee. Such paid administrative leave is not considered discipline.

VII. BENEFITS

- 7.1 The City shall provide the Employee and spouse/registered domestic partner/dependent(s) medical, vision, and dental benefits, and pay ninety-percent of the premiums for same. Current medical, vision, and dental benefits are provided as follows:

- Medical – AWC Benefits Trust, effective first of month following the Commencement Date, paid by the City at 90% and by the employee at 10%.
- Vision and Dental – Teamsters H&W paid by the City at 100%.

In addition, the City shall provide Employee with, and pay the premiums for, life insurance, long-term disability insurance, and Employee Assistance Program (EAP).

- 7.2 The City shall contribute an amount equal to five percent (5%) of Employee's gross salary to either the ICMA Deferred Compensation Plan or the Washington State Department of Retirement system deferred compensation plan, at the Employee's election.
- 7.3 The City will contribute to the Washington State Department of Retirement PERS System in an amount provided for by State law.
- 7.4 Employee shall be covered by the City's Errors and Omissions Insurance and with the Professional Liability Insurance provided to Department Heads and the City Council.
- 7.5 The City shall participate in a HRA VEBA plan for Employee. Sick leave in excess of nine hundred sixty (960) hours, as outlined in Section 6.2, shall be contributed annually to the Employee HRA VEBA account at 100% equivalent salary value. Upon retirement through PERS, termination without cause or a Qualifying Resignation (defined hereinafter), any accrued sick leave over nine hundred and sixty (960) hours shall be contributed to the HRA VEBA account at 100% equivalent salary value, and any accrued sick leave at nine hundred and sixty (960) hours or under shall be contributed to the HRA VEBA account at 25% equivalent salary value. Notwithstanding the foregoing, the total cumulative sick leave contribution by the City of Blaine to the Employee HRA VEBA account upon termination without cause, retirement or a Qualifying Resignation shall not exceed \$12,500.
- 7.5.1 Commencing with the first payroll distribution, Employee will contribute Fifty Dollars (\$50) per month to Employee's HRA VEBA account through payroll deductions. The City shall contribute One Hundred Dollars (\$100) per month to Employee's HRA VEBA account.
- 7.5.2 Additional Employee contributions to HRA VEBA may be defined by the group contracts.
- 7.6 Should the City negotiate a different health, dental, and/or vision benefit package with other exempt employees, including but not limited to a different employee contribution level, the City shall have the right to change the Employee's benefit package or contribution to that which has been negotiated with other exempt employees.

VIII. VEHICLE ALLOWANCE

- 8.1 The City shall provide the Employee \$250.00 per month compensation for travel within the City limits. For other mileage the Employee will be reimbursed at the City approved mileage reimbursement rate.
- 8.2 The City shall reimburse the Employee, at the City approved mileage reimbursement rate, for all mileage the Employee accrues using a personal, private vehicle while on City related business outside of Whatcom County, if a City vehicle is not available.

IX. TERMINATION, SEVERANCE PAY, TERMINATION FOR CAUSE

- 9.1 Termination. Employee is an employee at will, which means that the City can terminate Employee at any time and for any legal reason; likewise, Employee may resign at any time and for any reason. Termination by the City shall comply with any applicable Federal and State laws. Employee shall be entitled to compensation up through the last day of actual service.
- 9.2 Severance Pay. If Employee is terminated under the provisions of Section 9.1 and such termination is not for cause as provided in Section 9.2.1, then the City agrees to pay the Employee severance pay. Severance shall be equal to three (3) months' salary from the date of termination. Severance shall not include any benefits. All benefits terminate effective with the last date of employment or the end of the month in which the termination occurs if applicable. Such severance shall only be paid to Employee if Employee executes a release of all claims against the City with terms and conditions acceptable to the City.

In the event Employee is terminated for cause at any time as defined below in 9.2.1, then Employee shall not receive severance pay or benefits. Instead, Employee shall only receive his salary through the termination date.

9.2.1 Termination for Cause. "Cause" for the purposes of this Agreement shall be determined by the City Manager upon his reasonable determination that one (1) or more of the following facts exist, regardless of whether Employee has been provided with prior notice:

- a. Incompetence, inefficiency, or inattention to or dereliction of duty as reasonably determined by the City Manager;
- b. Dishonesty, immoral conduct, insubordination, discourteous treatment to the public or a fellow employee, or any act or failure to act which is prejudicial to the City as reasonably determined by the City Manager;
- c. Mental or physical unfitness for the position, subject to the provisions of the Americans with Disabilities Act and similar state statutes;
- d. Violation of the City's personnel policies, including but not limited to the sexual harassment or drug and alcohol policies, as they now exist or are hereafter amended or adopted;
- e. Employee's failure to support and comply with the policies and guidelines established by the City and/or failure to perform the duties required as outlined in "Attachment A" of this Agreement;
- f. Being arrested and charged with, or convicted of, a felony or any misdemeanor which, in the City Manager's discretion, renders Employee unfit to continue serving as Public Works Director; and/or

- g. Any other act, or failure to act, which in the reasonable judgment of the City Manager, is sufficient to show the employee to be an unsuitable or unfit person to hold the position of Public Works Director.

9.3 Resignation. Employee may resign at any time from his employment with the City, provided, however, that Employee is requested to provide thirty (30) days' notice prior to resignation. An employee who resigns shall not be entitled to severance. A resignation which meets the terms and conditions of a "Qualifying Resignation" shall entitle Employee to the following:

- a. Compensation up through the date of resignation;
- b. Cash out of accrued vacation pay;
- c. Contribution of sick leave to Employee's HRA-VEBA as provided for under Section 7.5.

9.3.1 A Qualifying Resignation is a resignation which satisfies all of the following terms and conditions:

- a. Employee provided the City with at least thirty days' notice prior to the effective date of the resignation.
- b. Employee was not arrested or convicted of any felony or misdemeanor at the time of providing the resignation notice.
- c. At the time of providing the resignation notice, Employee was not under investigation, had not been placed on unpaid administrative leave and had not been notified of any potential disciplinary action.

X. TERM

10.1 This Agreement shall commence on June 5, 2023 ("Commencement Date"), and shall continue indefinitely until Employee's separation from employment or as amended by agreement of both parties.

XI. GENERAL PROVISIONS

11.1 Notice. Any notices required to be given by the City to Employee, or Employee to the City, shall be delivered to the address of the receiving party last known to the addressing party. Such notices shall be delivered either personally to the addressee or may be deposited in the United States Mail, postage prepaid, to the address of the person receiving the notice. Any notice so posted in the United States Mail shall be deemed received three (3) days after the date of mailing and the effective date of any such notice shall be the date of mailing.

11.2 Dispute Resolution. This Section is designed to provide an orderly method of resolving any alleged breach of the terms of this agreement. A determined effort shall be made to settle any such differences at the lowest possible level in this dispute resolution procedure.

- 11.2.1 This dispute resolution procedure is the sole remedy for any dispute involving the interpretation or application of the specific terms of this agreement or any alleged breach thereof. To the maximum extent allowed by law, the dispute resolution procedure set forth herein is also the sole remedy for any disputes arising out of or relating to Employee's employment. Any dispute concerning this agreement shall be submitted to this procedure.
- 11.2.2 Employee shall notify the City no later than twenty (20) days after any occurrence which he deems to be a breach of this agreement. Employee shall be entitled to a hearing with the City Council within ten (10) working days of such notice. If the dispute cannot be settled at this hearing, Employee shall, within ten (10) working days following the rejection of the dispute by the City Council, submit, in writing, to the City Council a request for arbitration.
- 11.2.3 Upon receipt of a request for arbitration, the dispute shall be submitted to mandatory and binding arbitration before the Judicial Arbitration and Mediation Service ("JAMS") located in Seattle, Washington. Each party shall bear the cost of preparation and presentation, including attorneys' fees and expert witness fees, of its case before the arbitration. The cost of the arbitrator shall be shared equally. The decision of the arbitrator shall be binding and final on the parties. The arbitration shall be conducted in accordance with the JAMS Comprehensive Arbitration Rules and Procedures unless the parties agree otherwise.
- 11.2.4 The parties shall agree on a JAMS arbitrator within twenty (20) days from the date the matter is submitted to JAMS. In the event that the parties fail to agree on a JAMS arbitrator within such time, then JAMS shall be asked to submit the names of at least three arbitrators. Each party shall have ten (10) days after receiving the list to strike one name from that list. JAMS shall select the arbitrator from the names on the list that have not been struck by either party.
- 11.2.5 The parties may agree on another arbitrator in JAMS or another person at any time. In the event that JAMS is unable or unwilling to provide an arbitrator and the parties cannot otherwise agree, then the presiding judge of the Whatcom County Superior Court shall be asked to designate an arbitrator.
- 11.2.6 The hearing and the final decision of the arbitrator shall be made within thirty (30) days of the selection of the arbitrator or as soon thereafter as possible. The decision of the arbitrator shall be final and binding upon both parties, subject only to the right of appeal as provided in RCW 7.04; provided, however, that in arriving at such decision neither of the parties nor the arbitrator shall have the authority to alter this agreement in whole or in part.
- 11.2.7 The arbitrator cannot order the City to take action contrary to law.

11.2.8 The total cost of the stenographic record, if requested, shall be paid by the party requesting it. If the other party also requests a copy, each party shall pay one-half of the stenographic cost.

11.2.9 There will be no reprisals against Employee or others as a result of his or their participation in this dispute resolution process.

11.3 Non-Waiver. No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term, or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation, or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term, and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

11.4 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

11.5 Neutral Authorship. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

11.6 Time of Performance. Time is specifically declared to be of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

11.7 Entire Agreement. The entire agreement between the parties hereto is contained in this Agreement and the Appendices, as may be amended; and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument, duly authorized and executed by the parties subsequent to the date hereof.

XII. RESIDENCY

12.1 Employee shall reside within the Blaine School District boundaries.

DATED THIS _____ DAY OF _____, 2023.

Michael Harmon, City Manager

Harpiar, Gandhi, Employee

Approved as to Form

Peter Ruffatto, City Attorney

DRAFT